

# House Study Bill 136

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY  
GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to a criminal defendant filing an application for  
2 postconviction relief.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1103DP 82  
5 jm/je/5

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1 1 Section 1. Section 822.2, subsection 1, unnumbered  
1 2 paragraph 1, Code 2007, is amended to read as follows:  
1 3 Any person who has been convicted of, or sentenced for, a  
1 4 ~~public an indictable~~ offense ~~as defined in section 801.4~~ and  
1 5 who claims any of the following may institute, without paying  
1 6 a filing fee, a proceeding under this chapter to secure  
1 7 relief:

1 8 Sec. 2. Section 822.3, Code 2007, is amended to read as  
1 9 follows:

1 10 822.3 HOW TO COMMENCE PROCEEDING == LIMITATION.

1 11 A proceeding is commenced by filing an application verified  
1 12 by the applicant with the clerk of the district court in which  
1 13 the conviction or sentence took place. However, if the  
1 14 applicant is seeking relief under section 822.2, subsection 1,  
1 15 paragraph "f", the application shall be filed with the clerk  
1 16 of the district court of the county in which the applicant is  
1 17 being confined within ninety days from the date the  
1 18 disciplinary decision is final. All other applications must  
1 19 be filed within ~~three years~~ eighteen months from the date the  
1 20 conviction or decision is final or, in the event of an appeal,  
1 21 from the date the writ of procedendo is issued. However, this  
1 22 limitation does not apply to a ground of fact or law that  
1 23 could not have been raised within the applicable time period.  
1 24 Facts within the personal knowledge of the applicant and the  
1 25 authenticity of all documents and exhibits included in or  
1 26 attached to the application must be sworn to affirmatively as  
1 27 true and correct. The supreme court may prescribe the form of  
1 28 the application and verification. The clerk shall docket the  
1 29 application upon its receipt and promptly bring it to the  
1 30 attention of the court and deliver a copy to the county  
1 31 attorney and the attorney general.

1 32 EXPLANATION

1 33 This bill relates to a criminal defendant filing an  
1 34 application for postconviction relief.

1 35 The bill prohibits a person convicted of a simple  
2 1 misdemeanor from filing an application for relief. The bill  
2 2 does not prohibit any other criminal defendant from filing an  
2 3 application for postconviction relief.

2 4 The bill also condenses the time period to file most  
2 5 applications for postconviction relief. The bill provides  
2 6 that applications for postconviction relief must be filed  
2 7 within 18 months from the date of the final decision at the  
2 8 trial court level or, if the case is appealed, then within 18  
2 9 months of the date the appeal becomes final and a writ of  
2 10 procedendo is issued. Under current law, a person is granted  
2 11 three years from the date the case becomes final to file an  
2 12 application for postconviction relief.

2 13 Under the bill and in current law, a person is not time  
2 14 barred from filing an application for postconviction relief if  
2 15 an issue arises that could not have been raised during the  
2 16 time period granted to file an application for postconviction  
2 17 relief.

2 18 An application for postconviction relief generally is an  
2 19 application to the court, after an unsuccessful appeal, by a

2 20 criminal defendant attacking the constitutionality or validity  
2 21 of the sentence of the criminal defendant.  
2 22 LSB 1103DP 82  
2 23 jm:nh/je/5